

Jefferson-Pilot Insurance Company vs. Christopher L. Kearney
John L. Roberson

C-1-02-479
5/7/2004

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

JEFFERSON-PILOT INSURANCE COMPANY,)
)
 Plaintiff,)
)
 vs.) CASE NO.
) C-1-02-479
CHRISTOPHER L. KEARNEY,) (Judge Spiegel)
 Defendant.)

COPY

The deposition upon oral examination of JOHN L. ROBERSON, being taken pursuant to Order and in accordance with the Federal Rules of Civil Procedure before Rebecca J. Huddy, Notary Public, at the Marriott, 304 North Greene Street, Greensboro, North Carolina, on the 7th day of May, 2004, beginning at 8:40 a.m.

Q.54 Let's get'g started
8.62 It gets it
on monthly Bill

Reported By: Rebecca J. Huddy

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APPEARANCES:
For the Plaintiff: Mr. William R. Ellis
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600 Vine Street, Suite 2500
Cincinnati, Ohio 45202

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INDEX

By	Page
EXAMINATION	Mr. Roberts 3 - 91
EXAMINATION	Mr. Ellis 91 - 103
FURTHER EXAMINATION	Mr. Roberts 104 - 112
FURTHER EXAMINATION	Mr. Ellis 112 - 114

EXHIBITS

Number	Description	Page
Defendant's 19	Roberson correspondence	31
" 20	Disability Claim 10-31-94	58
" 21	Correspondence '93-'95	64
" 22	Handwritten calculations	111

Page 4

- 1 A. Yes.
 2 Q. Okay. How long have you been in retirement?
 3 A. Seven years.
 4 Q. Do you know when it was that you last worked, day,
 5 month?
 6 A. March 31, 1997.
 7 Q. Okay. Do you know whether or not you had
 8 responsibility for Mr. Kearney's claim through the
 9 date of your retirement?
 10 A. Yes.
 11 Q. Did you supervise someone that had a more principal
 12 role in administering his claim?
 13 A. Yes.
 14 Q. Okay. Someone reported up to you?
 15 A. Yes.
 16 Q. Okay. I'm sure you've given a deposition before, I
 17 suspect you have. You need for me to finish my
 18 question before you give an answer even if you know
 19 where I'm going, okay?
 20 A. Okay.
 21 Q. Okay. Who was it that reported up to you and had
 22 primary responsibility for Mr. Kearney's claim prior
 23 to your retirement?
 24 A. There would have been several persons: Phyllis
 25 Harden, Bob Maxwell, and Harold Shelton.

Page 3

1 The witness, JOHN L. ROBERSON, being first
 2 duly sworn, was examined and testified as follows:

4 EXAMINATION (by Mr. Roberts):

- 6 Q. Mr. Roberson, we just met briefly. We're here in
 7 Greensboro, North Carolina, to take your deposition.
 8 Could you please tell the jury your name and
 9 home address, please.
 10 A. My name is John L. Roberson. I reside at 3816 Kirby
 11 Drive, Greensboro, North Carolina. I go by the
 12 initials JL.
 13 Q. How would you like for me to refer to you, sir?
 14 A. JL.
 15 Q. Okay. I feel uncomfortable doing that.
 16 A. Pardon?
 17 Q. You're too much my senior for me to feel comfortable
 18 calling you by your first name. I'll call you Mr.
 19 Roberson.
 20 Mr. Roberson, you've been called to give
 21 testimony here today because you've had some
 22 experience administering a claim for disability filed
 23 by Chris Kearney; isn't that right?
 24 A. That's correct.
 25 Q. Okay. Are you presently retired, sir?

Page 5

- 1 (Mr. Kearney entered the hearing room.)
 2 Q. Could you help me understand the chain of command or
 3 hierarchy between the four of you during the '93-'97
 4 time frame.
 5 A. Phyllis and Bob were claims analysts. Harold Shelton
 6 was the manager of the Claims area.
 7 Q. How many Jefferson-Pilot Life Insurance Company claims
 8 analysts were there during the last five years of your
 9 employment?
 10 A. In what division are you talking about?
 11 Q. What are the divisions?
 12 A. Well, there was the Life divisions -- I have no idea
 13 how many were there. In the Individual Health
 14 Insurance Division, there would have been three
 15 analysts.
 16 Q. Is that the division that Ms. Harden and Mr. Maxwell
 17 were in?
 18 A. Yes.
 19 Q. Okay. Who would have been the third analyst?
 20 A. Kim Brann.
 21 Q. When you retired, were all three of those analysts
 22 still employed at Jefferson-Pilot?
 23 A. No. Bob Maxwell was retired.
 24 Q. He'd retired prior --
 25 A. He retired prior to me on disability.

2 (Pages 2 to 5)

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1-02-47
5/7/2004

Page 4

Jefferson-Pilot Insurance Company vs. Christopher L. Kearney
John L. RobersonC-1-02-479
5/7/2004

	Page 6		Page 8
1 Q. Okay. Did he have a disability policy with		1 Issue persons who reported to you.	
2 Jefferson-Pilot?		2 A. Entered the information from the application into our	
3 A. How would I know?		3 computer system and physically issued the policy and	
4 Q. He filed a claim and it came under your hierarchy.		4 mailed it when it was approved.	
5 A. No, it would not have.		5 Q. Okay. So they take information of potential or	
6 Q. All right.		6 prospective policyholders and if those persons choose	
7 A. If he had disability with us, it would have been with		7 to purchase a policy, they handle the mechanics of	
8 the Group Division. I had no responsibility for that.		8 that; is that right?	
9 Q. Okay. Very well. Were Kim Brann and Ms. Harden still		9 A. Do you want to state that again. I'm not sure I	
10 employed with Jefferson-Pilot when you retired?		10 understood.	
11 A. Ms. Harden was. Kim Brann is no longer with the		11 Q. Do I understand correctly that the persons who work in	
12 company and when she left, I don't recall.		12 the Policy Issue Department or Division or Group that	
13 Q. Did she leave prior to you or subsequently?		13 reported to you would intake the data of a prospective	
14 A. I don't recall.		14 policyholder who desired to purchase a policy and they	
15 Q. How do you know she left?		15 would perform the mechanics to accomplish that?	
16 A. She wrote me a note and told me that she was working		16 A. Generally, yes.	
17 with another company.		17 Q. Okay. Did they have any responsibility for actually	
18 Q. Do you know where?		18 drafting, creating, or authoring the actual policy or	
19 A. Yes.		19 policies or riders?	
20 Q. Where?		20 A. No.	
21 A. The Center for Creative Leadership.		21 Q. Where was that function performed when you were	
22 Q. Do you know where that is located?		22 working at Jefferson-Pilot?	
23 A. It's in Greensboro, North Carolina.		23 A. Do you want to go over that again.	
24 Q. When was the last time you spoke to her?		24 MR. ROBERTS: Could you read him the question	
25 A. I can't recall.		25 again.	
	Page 7		Page 9
1 Q. Would it have been several years ago?		1 (The last question was read back by the court	
2 A. At least.		2 reporter.)	
3 Q. At least several years ago? Was Mr. Maxwell replaced		3 A. Primarily in the Actuarial Department.	
4 when he went out on disability?		4 Q. How long did you work at Jefferson-Pilot?	
5 A. No.		5 A. Thirty-eight and a half years.	
6 Q. So when you retired, there were just two claims		6 Q. Did you ever have any responsibility or role in the	
7 analysts in the department?		7 Actuarial Department?	
8 A. As far as I recall, yes.		8 A. No.	
9 Q. And Mr. Shelton was their supervisor and he reported		9 Q. Do you know anything about how policies are created or	
10 to you?		10 were created by Jefferson-Pilot during your tenure?	
11 A. That's correct.		11 A. Do you want to state that again.	
12 Q. And did anybody else report to you directly?		12 Q. Do you know anything about how policies were created	
13 A. Yes. I had the responsibilities for underwriting,		13 at Jefferson-Pilot during your 38 and a half years	
14 policy issue, policy service and claims, and there		14 there?	
15 would have been several underwriters reporting to me,		15 A. Disability policies, yes.	
16 supervisor of policy service in addition to the Claims		16 Q. Okay. What can you tell me about what you know about	
17 area.		17 the creation of disability policies?	
18 Q. But the only claims personnel that reported to you are		18 A. What do you want to know about it?	
19 Mr. Shelton and Mr. Maxwell, Ms. Harden and Ms. Brann?		19 Q. Educate me about the process, what you can recall,	
20 A. That's correct.		20 start to finish in the creation of a disability	
21 Q. What does underwriting policy issue mean?		21 policy.	
22 A. Underwriting and policy issue. Underwriting is the		22 A. Well, the ideas generally came from the Marketing	
23 process of approving a rating of applicants. Policy		23 Department. It was discussed with the Underwriting	
24 issue is the issue of a policy.		24 Department and the Actuarial Department. The decision	
25 Q. Tell me about the functions performed by the Policy		25 was made for the type of benefits to be placed in the	

3 (Pages 6 to 9)

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<p style="text-align: center;">Page 10</p> <p>1 policy. The Actuarial Department wrote the policies, 2 rated them. They were reviewed by myself and the 3 Marketing Departments, agreed upon, printed, filed 4 with the Insurance Departments, and then marketed.</p> <p>5 Q. Thank you. What was your role in -- you mentioned 6 that you would have to review and agree upon them with 7 the Marketing Department. What exactly was your role 8 or responsibility in that process you just laid out 9 for me?</p> <p>10 A. I would have reviewed the policies' wording for my 11 opinion on if they were worded correctly or in 12 accordance with my knowledge of disability income 13 insurance.</p> <p>14 Q. Who else would perform a similar function to you, and 15 not necessarily names of the individuals but, you 16 know, the capacities? Would the Marketing Department 17 also evaluate the actual language and provide input in 18 the language to be used?</p> <p>19 A. They would suggest language or provisions that were 20 compatible with the competition, yes.</p> <p>21 Q. And the Actuarial Department would draft language as 22 well and comment on language used in a disability 23 policy?</p> <p>24 A. I didn't understand you.</p> <p>25 Q. The Actuarial Department would also offer language to</p>	<p style="text-align: center;">Page 12</p> <p>1 Q. Okay. Why would there be so many different disability 2 insurance policies created?</p> <p>3 A. Well, in 38 and a half years the industry changed 4 considerably.</p> <p>5 Q. Okay. Was Jefferson-Pilot out of the industry of 6 selling disability insurance policies when you 7 retired?</p> <p>8 A. Yes.</p> <p>9 Q. Do you know why it is that they ceased engaging in 10 that business line?</p> <p>11 A. It was a management decision.</p> <p>12 Q. Is it one you agreed with?</p> <p>13 A. Yes.</p> <p>14 Q. Why?</p> <p>15 A. The disability income field is a very difficult line 16 of business and it's highly specialized and unless you 17 were willing to commit the resources, it would be 18 difficult to have a viable line, and it was highly 19 competitive and one of the very minor parts of the 20 Jefferson-Pilot organization, so I thought it was a 21 good decision.</p> <p>22 Q. Was it profitable for Jefferson-Pilot prior to ceasing 23 the business line?</p> <p>24 A. Yes.</p> <p>25 Q. Did there ever come an occasion where a policy was</p>
<p style="text-align: center;">Page 11</p> <p>1 be used in a proposed disability insurance policy?</p> <p>2 A. Yes, and the Legal Department would be involved also, 3 yes.</p> <p>4 Q. Legal Department? Anyone else?</p> <p>5 A. I can't think of anyone else.</p> <p>6 Q. So would there be an initial draft of a policy that 7 would be shared with these respective departments and 8 the person who sent that proposal or draft of a policy 9 out would be asking for comments from the different 10 areas of the company?</p> <p>11 A. Yes.</p> <p>12 Q. And then people would provide their comments and 13 ultimately through a series of drafts, you'd come to a 14 final draft that would be approved and that's what 15 would be sent to the State Insurance Department?</p> <p>16 A. That's correct.</p> <p>17 Q. And would the same process apply for riders?</p> <p>18 A. Do you mean benefit riders?</p> <p>19 Q. Correct.</p> <p>20 A. Yes, yes.</p> <p>21 Q. During your tenure how many disability insurance 22 policies were ultimately created?</p> <p>23 A. I have no idea. I couldn't tell you exactly.</p> <p>24 Q. Dozens?</p> <p>25 A. At least.</p>	<p style="text-align: center;">Page 13</p> <p>1 created, filed with the State Insurance Department, 2 accepted by the State Insurance Department and then 3 sold to the public, and then after those sequence of 4 events occurred, the company decided to tweak the 5 language of the policy, modify it at all?</p> <p>6 A. Only if we came out with a new policy would there be 7 changes in benefits, didn't tweak the policies that 8 were already out there, no.</p> <p>9 Q. Well, once you sell the policy, you can't change it; 10 that's a contract that you can't just go out and 11 change, but did the company ever issue policies -- are 12 you mindful that the company used -- strike that, 13 start over. Are you mindful that the company used 14 letters and numbers to identify different versions of 15 policies?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Did there ever come an occasion where the 18 company stopped selling the XYZ policy and started 19 selling the TUV policy?</p> <p>20 A. Yes.</p> <p>21 Q. What would drive that kind of decision?</p> <p>22 A. Primarily change in the marketplace, new product 23 innovations.</p> <p>24 Q. Was it ever identified that there was problems with 25 the language of a policy and therefore the policy</p>

4 (Pages 10 to 13)

Jefferson-Pilot Insurance Company vs. Christopher L. Kearney
John L. RobersonC-1-02-479
5/7/2004

<p>1 was -- sale was discontinued?</p> <p>2 A. Not that I recall.</p> <p>3 Q. Were policies that were sold ever discontinued from 4 being sold?</p> <p>5 A. Yes.</p> <p>6 Q. And were they replaced by new policies?</p> <p>7 A. Well, what do you mean by were they replaced by new 8 policies, those that had been issued or for marketing 9 purposes?</p> <p>10 Q. What does that mean, those that had been issued or for 11 marketing purposes?</p> <p>12 A. Well, you said to replace a policy.</p> <p>13 Q. Right.</p> <p>14 A. I mean, I didn't understand what you meant by replace 15 it.</p> <p>16 Q. Did it ever come to be that the company decided, We're 17 going to stop selling policy A, we're going to start 18 selling policy B?</p> <p>19 A. Yes.</p> <p>20 Q. Did there come a point in time when the company said, 21 We're going to stop offering benefits rider for COLA, 22 that person we're going to offer a new version for 23 future policy sales? COLA is just an example.</p> <p>24 A. Yes, uh-huh.</p> <p>25 Q. That happened? Do you recall the company in the early</p>	<p>Page 14</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Was that commonly known within Jefferson-Pilot 3 while you were there?</p> <p>4 A. I can only speak for myself.</p> <p>5 Q. Okay. Did you ever discuss that concept with anybody 6 while you were at Jefferson-Pilot?</p> <p>7 A. I don't specifically recall specifically doing it, no.</p> <p>8 Q. Did you meet with Mr. Ellis last night?</p> <p>9 A. Yes.</p> <p>10 Q. Did you discuss your deposition today?</p> <p>11 A. That I was going to give one, yes.</p> <p>12 Q. And did you discuss -- did he talk with you about the 13 actual policy document that is Mr. Kearney's policy?</p> <p>14 A. I think we discussed the policy provisions, yes.</p> <p>15 Q. And he pointed out the provisions to you while you 16 were sitting having dinner or drinks?</p> <p>17 A. He may have asked me about my opinion about some 18 provisions, yes.</p> <p>19 Q. Did he direct your attention to certain portions of 20 the policy?</p> <p>21 A. We certainly didn't discuss every provision there, no.</p> <p>22 Q. But he directed your attention to certain sections of 23 the policy he wished to discuss with you?</p> <p>24 A. Yeah.</p> <p>25 Q. And he also shared with you the pay history on Mr.</p>
<p>Page 15</p> <p>1 '90s creating a new version of a residual disability 2 rider to sell and discontinuing the use of an old 3 form?</p> <p>4 A. I don't remember the date, but it was done, yes.</p> <p>5 Q. Okay. Do you recall why that decision was made to do 6 that?</p> <p>7 A. Most likely due to competitive reasons and 8 marketplace.</p> <p>9 Q. Are you speculating or do you know factually?</p> <p>10 A. I'm speculating.</p> <p>11 Q. Okay. Was it to improve upon the language of the 12 rider?</p> <p>13 A. No.</p> <p>14 Q. Did anyone ever advise you that a policy that was out 15 for sale in the marketplace needed to be discontinued 16 because it was ambiguous?</p> <p>17 A. No.</p> <p>18 Q. Are you mindful of the way courts read insurance 19 policies in construing ambiguities?</p> <p>20 A. Yes.</p> <p>21 Q. What's your understanding?</p> <p>22 A. Courts have interpreted language differently in 23 various jurisdictions, if that's what you mean.</p> <p>24 Q. No. Are you mindful that courts construe ambiguities 25 against the drafter of the insurance policy?</p>	<p>Page 17</p> <p>1 Kearney's claim?</p> <p>2 A. No.</p> <p>3 Q. That was a document that you two discussed, wasn't it?</p> <p>4 A. Last night is what you were asking, wasn't it?</p> <p>5 Q. Yes.</p> <p>6 A. No.</p> <p>7 Q. Wasn't that on the table right in front of you as you 8 were drinking?</p> <p>9 A. I don't recall everything that was on the table.</p> <p>10 Q. Okay. Are you mindful that insurance agents in the 11 field would provide prospective policyholders with 12 proposals?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know who authored the proposals that those 15 folks shared with prospects?</p> <p>16 A. I don't recall.</p> <p>17 Q. Were they authored within Jefferson-Pilot or were 18 agents out in the field creating whatever they wanted 19 to create for a proposal?</p> <p>20 A. Basically it came from Jefferson-Pilot.</p> <p>21 Q. Do you know what department created those proposals?</p> <p>22 A. It was out of the Marketing Department, I think.</p> <p>23 Q. The same department that comments on policy language 24 before a policy is issued?</p> <p>25 A. Yes.</p>

5 (Pages 14 to 17)

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<p style="text-align: right;">Page 18</p> <p>1 Q. The people who create those proposals, are they 2 mindful of the actual provisions of policies? 3 A. Yes. 4 Q. And does Jefferson-Pilot train its marketing folks and 5 claims analyst folks about how the policies that are 6 issued are interpreted? 7 A. (No response) 8 Q. There's a long pause in your answer. Is there a 9 reason for that? Did you understand the question? 10 A. I didn't fully understand it, no. Do you want to -- 11 Q. Okay. To me it could go one way or the other. You 12 have a company with a whole bunch of employees, the 13 company sells policies, and either you leave it up to 14 everybody to come to their own understanding of what 15 the policy means -- and hopefully it's the same 16 understanding -- or the company gives direction or 17 provides some education about what the policy says. 18 Which one of those was it at Jefferson-Pilot? 19 A. We would review new policies with the claims analysts 20 and with the underwriting personnel. 21 Q. Who is we? 22 A. Myself primarily for our department. 23 Q. So who would -- for the marketing folks who prepare 24 these proposals, did they obtain any training or 25 education about what the actual policies provide, or</p>	<p style="text-align: right;">Page 20</p> <p>1 policy provides? 2 A. I don't recall one. 3 Q. Are you mindful of a proposal ever having to be 4 scrapped because it was wrong and a new template of a 5 proposal was created for distribution to the agents in 6 the field? 7 A. Not that I recall. 8 Q. Do you receive any retirement income from 9 Jefferson-Pilot? 10 A. Yes. 11 Q. Still today? 12 A. Yes. 13 Q. Have you ever spoken to anyone at Disability 14 Management Services? 15 A. No. 16 Q. Do you know what company that is that I refer to? 17 A. No. 18 Q. Are you mindful from speaking to counsel or anyone 19 else that they were engaged to administer claims on 20 behalf of Jefferson-Pilot? 21 A. I was advised of that, yes. 22 Q. Okay. But you've never spoken to anybody there? 23 A. No. 24 Q. And you're not aware of them being engaged to assist 25 in the administration of any claims prior to your</p>
<p style="text-align: right;">Page 19</p> <p>1 if a new marketing person was hired on a given day, to 2 create a proposal, was he or she just supposed to come 3 up with their own understanding of what the policy 4 means? 5 A. Proposals were standardized. I think they were on 6 some type disk. I don't remember, fully remember the 7 process. 8 Q. So the head of the Marketing Department with input 9 from someone in Actuarial and Legal would create the 10 proposal? 11 A. I think that's correct. 12 Q. Okay. The company just didn't leave to each 13 employee's own determination what the policy says or 14 means; the company provided education and training to 15 its employees about what the policies say or provide, 16 right? 17 A. Correct. 18 Q. Okay. And based on that education and training and 19 input from other departments, the persons responsible 20 for developing the proposals would create those 21 proposals, and I guess you suggested there was some 22 kind of template form of a proposal that was blessed 23 by the company; is that right? 24 A. Yes. 25 Q. Did you ever see a proposal that misstated what the</p>	<p style="text-align: right;">Page 21</p> <p>1 retirement? 2 A. They were not, I can tell you that, no. 3 Q. Okay. Do you know when it was that Jefferson-Pilot 4 made the business decision to stop selling disability 5 insurance policies? 6 A. Well, the line was discontinued I think July 1, 1996, 7 and the decision would have been made sometime prior 8 to that. As I said before, it's a management 9 decision, or I should say it was a management 10 decision, not is a management. 11 Q. Was Clyde Honaker employed by the company when you 12 retired? 13 A. I don't recall. 14 Q. He was an employee of the company at some point, 15 though, right? 16 A. He was with Kentucky Central, who was purchased by 17 Jefferson-Pilot. He subsequently came to Greensboro 18 to head up the Ordinary Claims Department. I only met 19 Clyde for a short period after I retired, so I don't 20 recall when he came here. 21 Q. He arrived in Greensboro after you retired; is that 22 what you're saying? 23 A. As far as I know. 24 Q. Okay. What's ordinary claims refer to? What's that 25 nomenclature mean?</p>

6 (Pages 18 to 21)

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<p style="text-align: right;">Page 22</p> <p>1 A. Life insurance claims primarily. 2 Q. Is disability in there, too? 3 A. It wasn't when I was there, no. 4 Q. Okay. Did Paul Swink work at Jefferson-Pilot while 5 you were there? 6 A. Yes. 7 Q. What was his role? 8 A. He was in the Ordinary Claims Department. 9 Q. In what capacity? 10 A. I don't recall. 11 Q. What type of training did Jefferson-Pilot provide to 12 its claims analysts? 13 A. Well, we had one-on-one training, one-on-one training 14 with experienced analysts, if you're talking about a 15 new analyst coming in. They were encouraged to enroll 16 in the International Claims Association program which 17 had three separate books, I think it was, and if you 18 completed that course, you received a designation of 19 International Health Claims Associate or something to 20 that decree, and also they were encouraged to enroll 21 in LOMA, Life Office Management Association courses. 22 Basically that was it. Now, that's the claims people 23 that I had responsibility for. The others I can't 24 attest to. 25 Q. Did they maintain at their desk or office any kind of</p>	<p style="text-align: right;">Page 24</p> <p>1 opportunity to actually look at some historical 2 documents? 3 A. When I had the opportunity to look at some documents. 4 Q. Okay. What documents did you look at? 5 A. Some parts of the claim file, the actual claim file 6 itself -- 7 Q. You were given the entire claims file to review? 8 A. No, I don't think I was, no. 9 Q. Okay. Do you recall what documents that are in the 10 claim file that you did -- were given to review? 11 A. I looked at a claims worksheet which had benefit 12 payments. I looked at one or two of the actual proofs 13 of loss that were submitted. I did not review the 14 whole claim file. 15 Q. Okay. We've discussed earlier that you had the 16 opportunity to review at least sections of the actual 17 policy? 18 A. Yes. 19 Q. That policy bears the designation WJ576A. Are you 20 mindful of that? 21 A. Yes. 22 Q. Okay. Do those numbers and letters have any meaning? 23 Did WJ stand for anything? 24 A. WJ was the form number assigned to the Individual 25 Health Insurance Division, like W was the initial of</p>
<p style="text-align: right;">Page 23</p> <p>1 booklets or handouts or memos about the process of 2 handling claims, disability claims? 3 A. At one time there was a memo about processing claims 4 that was developed back when we were Pilot Life 5 Insurance Company. I don't recall specifically what 6 was in it. 7 Q. What time frame was that? 8 A. Probably goes back 25 years. 9 Q. Okay. Prior to, say, the past three weeks, when was 10 the last time you spoke with anyone about Chris 11 Kearney or Chris Kearney's claim? 12 A. Not since I was retired. I don't recall specifically 13 talking about it. 14 Q. Sometime prior to your retirement? 15 A. Yes. 16 Q. So sometime prior to your retirement you had 17 discussions about Chris Kearney, but then you retired 18 and it wasn't until these past two or three weeks, and 19 we're in May of 2004; is that right? 20 A. Let's make it the last two or three days. 21 Q. Okay. Do you have any independent recollection of the 22 handling of Mr. Kearney's claim? 23 A. Yes, once it was brought to my attention, I recalled 24 some of it, yes. 25 Q. When someone mentioned his name or when you had the</p>	<p style="text-align: right;">Page 25</p> <p>1 the individual health and then the J was added after 2 the merger between the two companies. 3 Q. Okay. The merger between the two companies, you're 4 talking about the Kentucky company? 5 A. No, I'm talking about Jefferson Standard Life 6 Insurance Company and Pilot Life Insurance Company. 7 Q. Okay. When did that take place? 8 A. I can't -- I don't remember the specific day. 9 Q. Was it during your tenure? 10 A. Yes. 11 Q. Was it in the '70s or -- 12 A. Oh, no. It was maybe 1987. 13 Q. Okay. 14 A. Perhaps, in that area. 15 Q. Okay. So would the WJ576A policy have been created 16 post merger of Jefferson and Pilot, since it has those 17 two letters on it? 18 A. I don't recall. 19 Q. Okay. Do you know whether that particular policy was 20 something that Jefferson-Pilot had success in selling, 21 question mark? 22 A. Depends on what you mean by success. 23 Q. Were there a lot of those form policies sold? 24 A. I can't tell you how many. It was the prime 25 non-cancellable disability policy for some time. I</p>

7 (Pages 22 to 25)

<p style="text-align: right;">Page 26</p> <p>1 don't remember how many policies. Unfortunately I 2 don't have those figures in my head.</p> <p>3 Q. Okay. When you say it was the prime non-cancellable 4 disability insurance policy for some time, meaning it 5 was something that you sold -- something that the 6 agents, whoever is in the field selling them, sold 7 more of than other of the disability insurance 8 policies that could be purchased from Jefferson-Pilot; 9 is that it?</p> <p>10 A. Probably, yes.</p> <p>11 Q. Okay. And would it also be true to say that it's one 12 that was administered by your department more than 13 other disability insurance policies that were sold by 14 Jefferson-Pilot?</p> <p>15 A. No, it wouldn't be true to say that.</p> <p>16 Q. Okay. There were other disability insurance policies 17 on which claims were made more frequently than this 18 particular version?</p> <p>19 A. Yes.</p> <p>20 Q. How many others were claims more frequently made 21 under?</p> <p>22 A. I can't tell you specifically. I know that we had a 23 franchise policy, disability policy which was sold on 24 a payroll deduction basis. The volume of policies and 25 claims far exceeded any other policy that we had.</p>	<p style="text-align: right;">Page 28</p> <p>1 this WJ576A have been the most reviewed policy by your 2 department because of the volume of claims being made 3 under it?</p> <p>4 A. I don't recall.</p> <p>5 Q. Well, Mr. Kearney's claim wasn't the only claim made 6 under that policy?</p> <p>7 A. No.</p> <p>8 Q. Okay. There were hundreds of claims made under that 9 policy?</p> <p>10 A. I said I didn't know the volume, so I can't say there 11 were hundreds. I don't know how many. I just don't 12 recall.</p> <p>13 Q. Okay. You can't approximate for me whether it's more 14 than a hundred or less than a hundred claims were made 15 under that policy?</p> <p>16 A. On that specific policy, I can't speculate on that. 17 That's been a long time.</p> <p>18 Q. It has been. Were you advised in the past week that 19 the company now asserts that it made a mistake in the 20 way it paid Mr. Kearney?</p> <p>21 A. Yes.</p> <p>22 Q. Did that issue ever come to your attention prior to 23 this past week?</p> <p>24 A. No.</p> <p>25 Q. No one ever suggested that to you prior to this past</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. It was -- there was more sales of those because --</p> <p>2 A. Yes.</p> <p>3 Q. -- they was sold to companies and offered to the 4 companies' employees?</p> <p>5 A. Well, it was sold to the employees of the companies on 6 a payroll deduction basis, yes.</p> <p>7 Q. Was that covered by ERISA, those policies?</p> <p>8 A. I don't recall. I don't think so. I think ERISA was 9 applicable to group insurance where you had the 10 contract with the employer as opposed to the 11 individual employee.</p> <p>12 Q. Did your department handle ERISA and non-ERISA claims 13 or was ERISA handled by a different function in the 14 company?</p> <p>15 A. Well, ERISA applied primarily to group insurance. We 16 may have had some policies that the employer was 17 paying a hundred percent of the premium, which may 18 have been subject to ERISA. I don't recall 19 specifically. We did have some group conversion 20 hospital policies that were considered under ERISA 21 because they were a conversion from an ERISA group 22 policy.</p> <p>23 Q. So your department did handle some ERISA matters?</p> <p>24 A. Yes.</p> <p>25 Q. Other than those franchise disability policies, would</p>	<p style="text-align: right;">Page 29</p> <p>1 week?</p> <p>2 A. On Mr. Kearney's claim?</p> <p>3 Q. Yes, sir.</p> <p>4 A. No.</p> <p>5 Q. You said that some of your memory about Mr. Kearney -- 6 you said that you do have some memory based on being 7 refreshed by these documents about Mr. Kearney's 8 claim. What can you recall sitting here today about 9 the administration of Mr. Kearney's claim?</p> <p>10 A. I'm not sure what you're -- in the administration of 11 his claim to what extent?</p> <p>12 Q. You had suggested earlier that you didn't have a 13 memory of the claim until you saw some documents and 14 then your memory was refreshed; is that --</p> <p>15 A. That's correct.</p> <p>16 Q. Okay. I'd like for you to tell me everything you 17 recall from memory about Mr. Kearney's claim.</p> <p>18 A. I recall that it was a difficult claim to administer 19 primarily because Mr. Kearney was a self-employed 20 manufacturer's representative and in his claim for 21 residual disability benefits, it was difficult to 22 obtain the verification of prior and current income, 23 and that's the extent that I recall.</p> <p>24 Q. Do you recall anything else about the claim from 25 memory, not from looking at documents with Mr. Ellis.</p>

8 (Pages 26 to 29)

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Fax (704) 372-4593

C-1-02-4
5/7/2004Page 28
by your
de**Jefferson-Pilot Insurance Company vs. Christopher L. Kearney**
John L. Roberson**C-1-02-479**
5/7/2004

<p>1 A. No.</p> <p>2 Q. Do you recall that when asked, Mr. Kearney would</p> <p>3 immediately provide you with copies of his tax</p> <p>4 returns?</p> <p>5 A. I don't recall that he did, no.</p> <p>6 Q. You don't recall either way?</p> <p>7 A. No.</p> <p>8 Q. Do you recall either way? I asked you a negative</p> <p>9 question, you gave me a negative response, so I want</p> <p>10 to clean it up on the record while we're here. Do you</p> <p>11 recall one way or the other about whether or not Mr.</p> <p>12 Kearney would give you copies of his tax returns when</p> <p>13 he was asked to do so?</p> <p>14 A. I don't recall specifically, no.</p> <p>15 Q. Do you recall whether he gave you the name and address</p> <p>16 and phone number of his accountant when he was asked</p> <p>17 to do so?</p> <p>18 A. I don't recall that either.</p> <p>19 Q. Do you recall whether the company contacted his</p> <p>20 accountant directly to get his financial data?</p> <p>21 A. I don't recall that, no.</p> <p>22 Q. Do you recall whether or not while you were employed</p> <p>23 with the company you or folks in your department</p> <p>24 seeking an independent medical evaluation of Mr.</p> <p>25 Kearney?</p>	<p>Page 30</p> <p>1 Q. Are you ready?</p> <p>2 A. Yeah.</p> <p>3 Q. Okay. You've had the opportunity to review those ten</p> <p>4 or twelve pages that I've compiled from the claims</p> <p>5 file, and for the record, let me indicate what pages</p> <p>6 we're talking about. This is a series of</p> <p>7 chronological letters from the claim file. The first</p> <p>8 is Bates labeled 2804, then 2796, 2788, 2840, 2821,</p> <p>9 2817, 2818, 2920, 2895, 2896.</p> <p>10 Mr. Roberson, did you frequently get involved</p> <p>11 in writing letters to individual policyholders in your</p> <p>12 capacity as Vice President?</p> <p>13 A. Yes.</p> <p>14 Q. Did I get your capacity correct, you were Vice</p> <p>15 President of the company during the '90s?</p> <p>16 A. Yes.</p> <p>17 Q. Was it a specific title, Vice President blank or --</p> <p>18 A. Vice President of Individual Health Insurance.</p> <p>19 Q. And who did you report to?</p> <p>20 A. I reported to Bill Luper.</p> <p>21 Q. Who was in what capacity?</p> <p>22 A. He was the Senior Vice President of both the Home</p> <p>23 Service Division and the Individual Health Division.</p> <p>24 Q. But you were the senior officer over the disability</p> <p>25 insurance product; is that right?</p>
<p>1 A. I don't recall specifically, no.</p> <p>2 Q. How about surveiling him?</p> <p>3 A. I don't recall it specifically, no.</p> <p>4 Q. Did your company use surveillance as a tool during</p> <p>5 your employment?</p> <p>6 A. Yes.</p> <p>7 Q. And you would investigate claimants in other ways by</p> <p>8 getting Equifax reports or other -- using other</p> <p>9 investigative tools as well, correct?</p> <p>10 A. Yes.</p> <p>11 MR. ROBERTS: I don't think I have a whole</p> <p>12 bunch more, but why don't we take a couple minute</p> <p>13 break so I can get situated, okay?</p> <p>14 THE WITNESS: Sure.</p> <p>15 (Brief recess)</p> <p>16 (Defendant's Exhibit No. 19 was marked for</p> <p>17 identification by Mr. Roberts.)</p> <p>18 Q. Mr. Roberson, I've gone through the claim file and</p> <p>19 tried to compile those letters that bear your name or</p> <p>20 reference to some degree and I've marked them --</p> <p>21 marked some of them as Exhibit 19. Why don't you take</p> <p>22 a few seconds to familiarize yourself with them and</p> <p>23 then we'll go through them one at a time relatively</p> <p>24 quickly.</p> <p>25 A. (Witness reviews document)</p>	<p>Page 31</p> <p>1 A. Yes, but I reported to him.</p> <p>2 Q. Okay. He had other functions of the company reporting</p> <p>3 up to him, didn't he, other than just disability</p> <p>4 insurance claims?</p> <p>5 A. Yes, he had the Home Service Division also.</p> <p>6 Q. Did you believe you had a good handle on the</p> <p>7 disability insurance contract rights given to</p> <p>8 policyholders while you were working at</p> <p>9 Jefferson-Pilot?</p> <p>10 A. I'm not sure I understand what you mean by the</p> <p>11 contract rights.</p> <p>12 Q. Did you feel while you were serving in that capacity</p> <p>13 as Vice President with Claims that you had a good</p> <p>14 understanding of the disability insurance contracts?</p> <p>15 A. Yes.</p> <p>16 Q. Would you review the contracts when making</p> <p>17 determinations or judgments about a particular claim?</p> <p>18 A. If it was necessary.</p> <p>19 Q. Would you review the policy riders as well?</p> <p>20 A. If it was necessary.</p> <p>21 Q. When would it be necessary?</p> <p>22 A. If someone raised a question about a provision, I</p> <p>23 would review it, but generally speaking, I kept in my</p> <p>24 head the provisions of the policies.</p> <p>25 Q. From your 38 years in your role as Vice President, you</p>

9 (Pages 30 to 33)

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Jefferson-Pilot Insurance Company vs. Christopher L. Kearney
John L. RobersonC-1-02-4
5/7/2004

<p style="text-align: right;">Page 34</p> <p>1 felt you had a fairly good recollection of the policy 2 provisions based on memory in your daily work with the 3 policies?</p> <p>4 A. Well, I wasn't a Vice President all that time, but 5 yes, I had a good knowledge of the policies.</p> <p>6 Q. Okay. How long were you a Vice President?</p> <p>7 A. Well, there are various stages of Vice President. I 8 think there was an Assistant Vice President, a 9 Second Vice President, then a Vice President. Yeah, I 10 don't recall those dates.</p> <p>11 Q. Okay. How long was Mr. Maxwell at the company before 12 he was required to leave?</p> <p>13 A. I don't remember specifically, but I'd say in excess 14 of 20 years.</p> <p>15 Q. And do you know what portion of that time was in the 16 Claims area?</p> <p>17 A. When he was first employed, he worked as an 18 underwriter for a period of time, a couple years 19 perhaps. Then he moved to the Claims Department and 20 stayed there for the remainder of his time.</p> <p>21 Q. Okay. So would he, too, in your judgment, since he 22 reported up through you, have a good working knowledge 23 of the policies, the disability insurance policies and 24 the riders?</p> <p>25 A. In general, yes.</p>	<p style="text-align: right;">Page 36</p> <p>1 determining that this needs to be paid or this one 2 qualifies for payment, before that first check is 3 sent, you perform some quality control of the 4 decision?</p> <p>5 A. That's correct.</p> <p>6 Q. And the procedure in place is that the claims analyst 7 as a first matter reviews the information that's been 8 provided from the claimant and whoever else, reviews 9 the policy and makes a judgment about the payment and 10 the amount?</p> <p>11 A. Well, they review the information that they receive. 12 I don't know that they go back and specifically review 13 the policy, but they would have general knowledge of 14 the policy. But yes, they would do that, determine 15 the benefits payable.</p> <p>16 Q. Okay. And then in the initial payment regardless of 17 size, it's the procedure that it goes to you for you 18 to perform the same review; is that accurate?</p> <p>19 A. I didn't do the in-depth review that the analyst 20 would, but yes, I did review and approve the claim.</p> <p>21 Q. You insured on the company's behalf that based on the 22 policy provisions that the payment was appropriate?</p> <p>23 A. Tried to, yes.</p> <p>24 Q. Okay. Were you good at your job?</p> <p>25 A. That's a matter of opinion. I thought so, yes.</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. This first page of Exhibit 19 purports to be a letter 2 from Mr. Kearney to you, February 8, 1995, and I think 3 that's your handwriting to Bob Maxwell "What is he 4 talking about? star."</p> <p>5 A. Right.</p> <p>6 Q. That's your handwriting?</p> <p>7 A. Yes.</p> <p>8 Q. Do you know one way or the other about any dialogue 9 you had with anybody on Mr. Kearney's claim prior to 10 this date? Do you know whether or not your 11 involvement in Mr. Kearney's claim predicated February 12 of '95 or not? It's not a trick question. I'm not 13 going to pull something out that shows it earlier, 14 but --</p> <p>15 A. I'll assume I did, yes, because I reviewed all the 16 claims that were paid initially and then I reviewed 17 all claims that were paid monthly that were over 18 certain amounts of money, so yes, I would have seen 19 the claim prior to that time, yes.</p> <p>20 Q. Okay. Tell me about that. You said you reviewed all 21 claims paid initially. Is that regardless of the 22 amount of money being paid out?</p> <p>23 A. I think so, yes.</p> <p>24 Q. So that was just a procedure or protocol in place that 25 the claims analysts, when reviewing a claim and</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. Well, they employed you for 38 years and they're still 2 paying you.</p> <p>3 A. I thought so, yes.</p> <p>4 Q. Was Mr. Maxwell good at his job?</p> <p>5 A. Yes.</p> <p>6 Q. Mr. Shelton?</p> <p>7 A. Yes.</p> <p>8 Q. Ms. Harden?</p> <p>9 A. Yes.</p> <p>10 Incidentally, with Mr. Maxwell, I understand 11 you're going to depose him, and I'm appalled that you 12 would do that to a man who is house-confined. He's 13 confined to a chair. He can hardly see. I mean, he 14 didn't recognize me when I came in his house last 15 night, and he's a sick man. He almost died last year, 16 three months in the hospital and -- you know, it's --</p> <p>17 Q. As long as you want to discuss this on the record, I 18 can tell you exactly what my conversation was. I 19 called his phone number yesterday. I spoke to his 20 wife, who's name is Mary, as you probably know. I 21 said, Mrs. Maxwell, my name is Mike Roberts, I'm a 22 lawyer, I'm in Greensboro taking some depositions 23 relating to a Jefferson-Pilot matter. I understand 24 that your husband is not well and I'm calling to ask 25 if it would be an imposition if I spent an hour with</p>

10 (Pages 34 to 37)

Jefferson-Pilot Insurance Company vs. Christopher L. Kearney
John L. RobersonC-1-02-479
5/7/2004

Page 36

<p>1 him tomorrow in a deposition, and I understand that if 2 he can't do it for medical reasons, we won't go 3 through with it, but I called to simply ask, and she 4 told me, I don't think there's a problem with that, 5 and then she left the phone for a minute, she came 6 back and said, I spoke to him, he says it's not a 7 problem.</p> <p>8 So sir, I am not trying to inconvenience 9 anybody you care for. I called. I told her that I 10 don't intend to do it if it's an imposition. He told 11 me it would be okay.</p> <p>12 A. She told --</p> <p>13 Q. I know nothing about his medical condition. I don't 14 know anything about him. But I called and said, I'll 15 do it if it's not an imposition, I won't do it if it 16 is. So I'm basing my decision to take his deposition 17 later today on his confirmation that it would be okay.</p> <p>18 A. She understood you to be representing Jefferson-Pilot 19 Life Insurance Company and he was doing it as a favor 20 to his company which he was retired to. She did not 21 understand that you were a plaintiff's attorney.</p> <p>22 Q. Well, I'm not a plaintiff's attorney.</p> <p>23 A. Well, a --</p> <p>24 Q. I'm a lawyer, I graduated from the University of Notre 25 Dame, I'm the best lawyer in the state of Ohio.</p>	<p>Page 38</p> <p>1 A. I don't recall what it was. 2 Q. Mr. Kearney's claim exceeded the threshold? 3 A. Yes. 4 Q. And so every month you determined as a second matter 5 whether or not the payment Mr. Kearney was receiving 6 between 1993 and your retirement was properly payable, 7 right?</p> <p>8 A. I reviewed the analysts' work. I didn't go back and 9 completely review the whole claim every time, no. 10 Q. Okay. Exhibit 9 is a document you discussed with Mr. 11 Ellis last evening and it is the Disability Claims 12 Worksheets on the two policies Mr. Kearney purchased, 13 correct?</p> <p>14 A. As I said before, I do not recall having discussed 15 this particular form with Mr. Ellis last night. 16 Q. Well, it was sitting before you. Anyway, your 17 initials run down the left-hand margin, correct? 18 A. That's correct. 19 Q. And you're initialing the propriety of each monthly 20 payment on each of those pages with every initial, 21 correct? 22 A. That's correct. 23 Q. And in addition to your initials, there's the initials 24 of Phyllis Harden and perhaps Mr. Maxwell and Mr. 25 Shelton as well from time to time?</p>
<p>Page 39</p> <p>1 A. Okay. 2 Q. What difference does it make? 3 A. Okay. 4 Q. I called and asked -- 5 A. She would not have agreed to it if she had not known 6 you were -- 7 Q. Why not? Why would -- 8 A. Because she didn't want to put him through that 9 process. 10 Q. What difference does it make if he can give a 11 deposition whether it's at the request of a lawyer 12 representing a plaintiff or a lawyer representing a 13 defendant? By the way, I'm not a plaintiff's 14 attorney. I'm the defendant in this case. 15 Is there anything else you want to criticize 16 me for about mistreating people? 17 A. I think I've expressed my opinion with regards to 18 Mr. Maxwell, yes. 19 Q. Thank you. 20 And if a payment requires a -- if a monthly 21 payment is over a certain threshold, you have to as a 22 quality control make sure each monthly payment is 23 actually payable, right? 24 A. Yes. 25 Q. And what is the threshold?</p>	<p>Page 41</p> <p>1 A. That's correct. 2 Q. And so with every -- there was two checks issued every 3 month because he had two policies, right? 4 A. That's correct. 5 Q. So each check or in this case both checks every month 6 were reviewed for propriety of payment by the claims 7 analyst as a first matter and you as a second matter? 8 A. What do you mean by propriety of payment? 9 Q. The appropriateness of the payment. 10 A. Yes. 11 Q. Okay. I'm not sure you answered my question, the 12 second question -- 13 A. Okay, because in this particular case we made an error 14 in the payment. 15 Q. Who told you that? 16 A. Who told me that? I can tell by looking at it. 17 Q. Okay. 18 A. I'm familiar with the policy and the riders and the 19 benefits were not payable as we paid them. 20 Q. Okay. Prior to your retirement did you come to that 21 conclusion? 22 A. No. 23 Q. Okay. Prior to -- today is May 7 of 2004. Prior to 24 April 30 of 2004, had you come to that conclusion? 25 A. Today is what?</p>

11 (Pages 38 to 41)

Jefferson-Pilot Insurance Company vs. Christopher L. Kearney
John L. RobersonC-1-02-4;
5/7/2004

<p style="text-align: right;">Page 42</p> <p>1 Q. May 7. 2 A. May 7? Prior to April 30? 3 Q. Of 2004? 4 A. No, I wasn't even familiar with this case. I wasn't 5 involved at that time. 6 Q. Okay. So when did the payments begin? 7 A. July of 1993 is the first one. 8 Q. Okay. So from July of '93 -- and you retired in July 9 of '97? 10 A. April of '97. 11 Q. April of '97. So '94, '95, '96, '97. If it was four 12 years, it would be 48 months, so you'd retired three 13 or four months short of four years, right, so 45 14 months, correct? 15 A. Yes, sir. 16 Q. Over the course of 45 months, each month you reviewed 17 and determined that two checks going to Mr. Kearney 18 were proper and appropriate under the facts of his 19 claim, the terms of his policy, and the provisions of 20 his riders, and your testimony today is after meeting 21 with Mr. Ellis last night that you made 90 different 22 mistakes? 23 A. Yes. 24 Q. Okay. You worked at the company for 38 years, you 25 were the Vice President, you were head of the Claims</p>	<p style="text-align: right;">Page 44</p> <p>1 COLA and Social Security Supplement, how did you get 2 it wrong 90 times? 3 A. It was a residual disability claim for which he 4 qualified for the full residual benefit and except for 5 the payment of Social Security and the COLA, the 6 benefits were correct. 7 Q. You didn't answer my question. If you're so mindful 8 of these policies and if it's unambiguous that he's 9 just not entitled to COLA or Social Security, how did 10 you get it wrong for four years on 90 different 11 occasions? 12 A. I don't know how, but we did. 13 Q. Okay. Not only you got it wrong, but your subordinate 14 got it wrong on 90 different occasions, and I'm 15 confused. If the policy language is express, it's 16 unambiguous, there's no doubt about it, he's not 17 entitled to those benefits, how did the two of you get 18 it wrong 180 times over four years? 19 A. We made a mistake. 20 Q. Okay. You made 180 mistakes, right? 21 A. If that's the number of payments, yes. 22 Q. Up to your retirement, and then another 180 mistakes 23 were made after your retirement; you're mindful of 24 that? 25 A. Apparently once it got on the track, it just continued</p>
<p style="text-align: right;">Page 43</p> <p>1 Department, and Mr. Ellis educated you yesterday about 2 your four years of errors?</p> <p>3 MR. ELLIS: Objection. Go ahead.</p> <p>4 A. Mr. Ellis did not educate me at all.</p> <p>5 Q. Okay. I wouldn't suspect he could. So February 8 of 6 1995, this first letter of Exhibit 19, would not have 7 been your first contact with the Kearney claim, 8 correct?</p> <p>9 A. That's correct.</p> <p>10 Q. Are you mindful that Mr. Maxwell told Mr. Kearney in 11 1995 that his residual disability benefits were 12 payable for only two years?</p> <p>13 A. I was after looking at this letter.</p> <p>14 Q. Is that accurate or was that a misrepresentation by 15 Mr. Maxwell?</p> <p>16 A. That was a mistake by Mr. Maxwell.</p> <p>17 Q. It wasn't a misrepresentation, it was a mistake?</p> <p>18 A. Yes.</p> <p>19 Q. And you determined it was a mistake because you went 20 back and reviewed the policy and came to that 21 conclusion or did you just know because you have -- 22 you're mindful of the policy provisions?</p> <p>23 A. I'm mindful of the policy provisions.</p> <p>24 Q. Okay. Tell me, sir, if the policy expressly and 25 unambiguously did not allow Mr. Kearney to receive</p>	<p style="text-align: right;">Page 45</p> <p>1 running.</p> <p>2 Q. Well, it didn't get on a track. You reviewed it every 3 month. Your initials appear every single month for 4 four years, right?</p> <p>5 A. My initials are there, but you don't go back and look 6 at every aspect of the claim every month. You don't 7 have time to do it.</p> <p>8 Q. Okay. So your company -- has your company ever before 9 made over 300 individual independent mistakes when the 10 language is so unambiguous, anyone could conclude that 11 it's a mistake? Has that ever happened before?</p> <p>12 A. I don't have any independent knowledge of it 13 happening, but I'm sure that it's possible.</p> <p>14 Q. 300 mistakes? That's possible? With someone who's 15 worked at the company for 38 years, Vice President? 16 Is that possible when the language is unambiguous?</p> <p>17 A. Not only is it possible, it apparently happened in 18 this case.</p> <p>19 Q. Okay. How come you didn't pick it up in four years? 20 If Mr. Ellis can pick it up and share it with you last 21 night, why couldn't you pick it up in four years?</p> <p>22 MR. ELLIS: Objection.</p> <p>23 Q. You can answer.</p> <p>24 A. Here again, Mr. Ellis didn't share that with me last 25 night.</p>

12 (Pages 42 to 45)

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